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| 10/676,284 | 10/01/2003 | Steven Phillip Gologorsky | 620-022US | 7073 |
| 22897 | 7590 | 05/08/2008 | EXAMINER | |
| DEMONT & BREYER, LLC | | | ROBINSON, KITO R | |
| 100 COMMONS WAY, Ste. 250 | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/676,284 | GOLOGORSKY ET AL. | |
| | Examiner | Art Unit | |
| | KITO R. ROBINSON | 4143 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 April 2008.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 01 October 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04/07/2008</u> . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Status of Claims

1. This action is in reply to the response filed on 25 March 2008.
2. Claims 1-20 have been amended.
3. Claims 1-20 are currently pending and have been examined.
4. The rejections to claims 1-20 have been updated to reflect the amendments

Information Disclosure Statement

5. The Information Disclosure Statement filed on 07 April 2008 has been considered. An initialed copy of the Form 1449 is enclosed herewith.

Response to Arguments

6. Applicant's arguments received on 25 March 2008 have been fully considered but they are not persuasive. Referring to the previous Office action, Examiner has cited relevant portions of the references as a means to illustrate the systems as taught by the prior art. As a means of providing further clarification as to what is taught by the references used in the first Office action, Examiner has expanded the teachings for comprehensibility while maintaining the same grounds of rejection of the claims, except as noted above in the section labeled "Status of Claims." This information is intended to assist in illuminating the teachings of the references while providing evidence that establishes further support for the rejections of the claims.
7. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection. However, in an effort to elucidate the applicability of the selected prior art, the Examiner has provided a riposte to the Applicant's arguments.
8. With regard to the limitations of claim 1, Applicant argues "Nowhere does Abdou teach or suggest, alone or in combination, what claim 1 recites -- namely, publishing a relationship between a first bid

variable and a second nonbid variable, and selecting a winning bid that is dependent on the first auction variable but independent of the second auction variable, and wherein the first auction variable and the second auction variable become contract terms of a contract that result from the auction. In contrast, Abdou teaches an auction that aggregates orders from a plurality of customers to satisfy an order. There is no "relationship" between a first auction variable and a second auction variable that becomes contract terms of a contract, as recited in the claim. For this reason, the applicants respectfully submit that the rejection of claim 1 is traversed." See the claim rejection below.

Drawings

9. The Examiner makes note of the Applicant's response to the drawing objection and respectfully rescinds the drawing objections.

Claim Rejections - 35 USC § 112

10. The Examiner makes note of the Applicants response.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 1-3, 5, 10 & 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Nieboer et al. US Patent Number US 6,418,419, hereafter Nieboer in view of Abdou US 2002/0107773, hereafter Abdou.

As per claim 1,

Nieboer discloses,

- *publishing from a data processing system a relationship between a first auction variable and a second auction variable* (**See at Column 8, lines 28 & line 44: "The ticker tape 102 allows users to view information within the system in a consistent and intuitive manner... The relationship of the order to the user will invoke a color-coding scheme on the user's terminal"**).
- *wherein the first auction variable and the second auction variable become contract terms of a contract that results from the auction* (**see at least Column 2 lines 46-50: "at least one depicting prices of various items and contracts from external multiple data sources which may be used as variables of the algorithm or an input to a constraint variable"**)
- *wherein the value of the second auction variable in the contract is based on the value of the first auction variable in the contract and the relationship between the first auction variable and the second auction variable* (**See at least Column 8, lines 60-65: "Generally, if a security derives its value from the price of the common stock in the symbol...or [LYX/LYO] where the first security is the security which derives its value in part from the value of the second security"**).

Furthermore, Nieboer discloses *bid is dependent on the first auction variable and independent of the second auction variable* (see at least Column 2, lines 34-40: "...where the price is the dependent variable of the algorithm within the constraints and the price of another item as an independent variable, the algorithm representing a buy or sell order"). Nieboer dose not discloses *selecting at the data processing system a winning bid in the auction*. However, Abdou in at least Paragraph 0038 discloses "The winning bid will be selected based upon various criteria, e.g., price, delivery schedule, reputation on quality, regulatory approval status, and/or any other specified requirements listed by the customer(s)".

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Nieboer with the technique of Abdou because "it will create an auction market instead of a negotiated market and will display prices to all participants and save the information for later use" (as taught in Nieboer).

As per claim 3,

Nieboer discloses the limitations as shown in the rejection of Claim 1 above. Nieboer does not disclose the limitation of *first auction variable is delivery schedule and said second auction variable is price*. However Abdou in at least Paragraph 0038 discloses "The winning bid will be selected based upon various criteria, e.g., price, delivery schedule, reputation on quality, regulatory approval status, and/or any other specified requirements listed by the customer(s)."

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Nieboer with the technique of Abdou because "it will create an auction market instead of a negotiated market and will display prices to all participants and save the information for later use" (as taught in Nieboer).

As per claim 5,

Nieboer discloses the limitations as shown in the rejection of Claim 1 above. Nieboer does not disclose the limitation of *first auction variable is a measure of quality and the second auction variable is price*. However Abdou in at least Paragraph 0038 discloses “The winning bid will be selected based upon various criteria, e.g., price, delivery schedule, reputation on quality, regulatory approval status, and/or any other specified requirements listed by the customer(s).”

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Nieboer with the technique of Abdou because “it will create an auction market instead of a negotiated market and will display prices to all participants and save the information for later use” (as taught in Nieboer).

As per claim 10,

Nieboer discloses the limitations as shown in the rejection of Claim 1 above. Nieboer does not disclose the limitation of *the data processing system calculates the value of the second auction variable based on the first auction variable and the relationship for each bid as it is received, and makes available the value of the second auction variable for display to one or more bidders*. However, Abdou, in at least Paragraph 0010 discloses “a method and apparatus that provides an electronic commerce environment and the order is presented for bidding to a plurality of interested vendors.”

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Nieboer with the technique of Abdou because “it will create an auction market instead of a negotiated market and will display prices to all participants and save the information for later use” (as taught in Nieboer).

14. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nieboer & Abdou in view of Alaia et al. US Patent Number US 6,199,050 Bi, hereafter Alaia.

As per claim 2,

Nieboer & Abdou discloses the limitations as shown in the rejection of Claim 1 above. Nieboer & Abdou does not disclose the limitation of *the relationship is such that a change in the first auction variable in a direction that is favorable to the auction solicitor induces a change in the second auction variable in a direction that is favorable to a bidder*. However, Alaia, in at least Column 7, Lines 53-61 discloses "With the time constraints on bidding, bidders wanted the ability to be able to rapidly adjust the lot price without specifically changing individual line items. Therefore, "pro rata" bid adjustment was developed. With pro rata bid adjustment, bidders could change the total lot price quote, and the software would apportion pro rata the change across individual line items in the lot. However, a pro rata apportionment may result in individual items being priced at levels that are uneconomic for the bidder."

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Nieboer & Abdou with the technique of Alaia because flexibility allows bidders to participate in the auction fully, and maximize the competitive nature of an auction (as taught by Alaia).

15. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nieboer & Abdou in view of Aggarwal et al. US 6,151,589 [Aggarwal '589].

As per claim 4,

Nieboer & Abdou discloses all limitations in claim 1 but does not disclose the following limitations. However, Aggarwal '589 discloses:

- *the first auction variable is time to complete and the second auction variable is price* (See at least Column 3 line 9-11).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to associate first & second variables of Nieboer & Abdou to the teachings of

time completed and price of Aggarwal '589 so that the time intervals for the auctions are adjusted in such a way that auctions are not so slow, that buyer's timed bids are excluded (See Aggarwal Column 2, line 34-37).

16. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nieboer & Abdou in view of "Reviewing and Analyzing Service Contracts" by Kenneth Williams [Williams].

As per claim 6-8

Nieboer & Abdou discloses all limitations in claim 1 but does not disclose the limitations in claim 6-8. However, [Williams] teaches *the first auction variable is price and the second auction variable is warranty period* (See at least page 2). In Addition, Williams teaches *the first auction variable is price and the second auction variable is service contract price* (See at least page 2) *and the first auction variable is price and the second auction variable is service contract scope* (See at least page 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine first & second variables of Nieboer & Abdou with the teachings of warranties and service contracts by Williams because it is an assurance by the vendor that the products or services are as represented or will be as promised.

17. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nieboer & Abdou in view of "Test Drive RFPHere.com Free for Three Months" by *Business Editors*.

As per claim 9,

Nieboer & Abdou discloses all limitations in claim 1 but do not disclose the following limitation. However, *Business Editors* teaches:

- *the first auction variable is price and the auction variable is the provision of one or more articles free of charge* (See at least page 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the first and second variables of Nieboer & Abdou with the teachings of price

and articles free of charge by *Business Editors* because it provides companies to easily establish a presence on the Internet to sell their new, used, refurbished, and surplus products to businesses nationwide (See at least page 2).

18. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nieboer in view of Abdou in further view of Alaia.

As per claim 11,

Nieboer discloses,

- *publishing from a data processing system a relationship between a first auction variable and a second auction variable (See at Column 8, lines 28 & line 44: “The ticker tape 102 allows users to view information within the system in a consistent and intuitive manner... The relationship of the order to the user will invoke a color-coding scheme on the user's terminal”).*
- *wherein the first auction variable and the second auction variable become contract terms of a contract that results from the auction (see at least Column 2 lines 46-50: “at least one depicting prices of various items and contracts from external multiple data sources which may be used as variables of the algorithm or an input to a constraint variable”)*
- *wherein the value of the second auction variable in the contract is based on the value of the first auction variable in the contract and the relationship between the first auction variable and the second auction variable (See at least Column 8, lines 60-65: “Generally, if a security derives its value from the price of the common stock in the symbol...or [LYX/LYO] where the first security is the security which derives its value in part from the value of the second security”).*

Furthermore, Nieboer discloses *bid is dependent on the first auction variable and independent of the second auction variable (see at least Column 2, lines 34-40: “...where the price is the dependent variable of the algorithm within the constraints and the price of another item as*

an independent variable, the algorithm representing a buy or sell order"). Nieboer dose not discloses *selecting at the data processing system a winning bid in the auction*. However, Abdou in at least Paragraph 0038 discloses "The winning bid will be selected based upon various criteria, e.g., price, delivery schedule, reputation on quality, regulatory approval status, and/or any other specified requirements listed by the customer(s)".

Nieboer & Abdou does not disclose the limitation of:

- *the relationship is such that a change in the first auction variable in a direction that is favorable to the auction solicitor induces a change in the second auction variable in a direction that is favorable to a bidder.*

However, Alaia, in at least Column 7, Lines 53-61 discloses "With the time constraints on bidding, bidders wanted the ability to be able to rapidly adjust the lot price without specifically changing individual line items. Therefore, "pro rata" bid adjustment was developed. With pro rata bid adjustment, bidders could change the total lot price quote, and the software would apportion pro rata the change across individual line items in the lot. However, a pro rata apportionment may result in individual items being priced at levels that are uneconomic for the bidder."

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Nieboer & Abdou with the technique of Alaia because flexibility allows bidders to participate in the auction fully, and maximize the competitive nature of an auction (as taught by Alaia).

As per Claim 19,

Nieboer Discloses:

- *the first auction variable is quantity and the second auction variable is price* (See at least Column 8, Lines 33-37: "These bids, offers and trades will include the following data elements relative to each: Security identification symbol; whether the order is a bid, an offer, or a trade; quantity; and price versus its related security price").

As per claim 20,

Nieboer, Abdou & Alaia discloses the limitation as applied to in claim 11 above. Nieboer & Alaia do not disclose the following limitation however Alaia does:

- *the data processing system calculates the value of the second auction variable based on the first auction variable and the relationship for each bid as it is received, and makes available the value of said second auction variable for display to one or more bidders*
(See at least Para. 0010: Take note a method and apparatus that provides a electronic commerce environment and the order is presented for bidding to a plurality of interested venders).

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Nieboer & Abdou with the technique of Alaia because flexibility allows bidders to participate in the auction fully, and maximize the competitive nature of an auction (as taught by Alaia).

19. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nieboer, Abdou & Alaia in view of "Reviewing and Analyzing Service Contracts" by Kenneth Williams [Williams].

As per claim 15,

Nieboer, Abdou & Alaia discloses all limitations as applied to in claim 11 above but does not disclose the following limitations. However [Williams] teaches:

- *the first auction variable is price and the second auction variable is warranty period* (See at least page 2).

As per claim 16,

In Addition, Williams teaches:

- *the first auction variable is price and the second auction variable is service contract price*
(See at least page 2).

As per claim 17,

Moreover, Williams teaches:

- *the first auction variable is price and the second auction variable is service contract scope (See at least page 2).*

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine first & second variables of Nieboer, Abdou & Alaia with the teachings of warranties and service contracts by Williams because it is an assurance by the vendor that the products or services are as represented or will be as promised.

20. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nieboer, Abdou & Alaia in view of "Test Drive RFPHere.com Free for Three Months" by *Business Editors*.

As per claim 18,

Nieboer, Abdou & Alaia discloses all the limitations as applied to in claim 11 but does not disclose the following limitation. However, *Business Editors* teaches:

- *the first auction variable is price and the auction variable is the provision of one or more articles free of charge (See at least page 2).*

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the first and second variables of Nieboer, Abdou & Alaia with the teachings of price and articles free of charge by *Business Editors* because it provides companies to easily establish a presence on the Internet to sell their new, used, refurbished, and surplus products to businesses nationwide (See at least page 2).

Conclusion

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Kito Robinson** whose telephone number is **571.270.3921**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **James Reagan** can be reached at **571.272.6710**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see

<http://portal.uspto.gov/external/portal/pair> . Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

Any response to this action should be mailed to:

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/Kito R Robinson/Examiner, Art Unit 4143

28 April 2008

/James A. Reagan/

Supervisory Patent Examiner, Art Unit 4143